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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 28 2006

EAC 04 066 51426

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a China Market Specialist, Export Assistant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The AAO upheld the director's decision, finding that the petitioner had not established that he would decrease the trade deficit with China as claimed and had not provided evidence of any success on the part of his own company, such as tax returns or coverage in the general or trade media. On motion, the petitioner does not submit the evidence found lacking in the appellate decision, tax returns, financial statements or media coverage confirming the success of the petitioner's own company. Instead, counsel significantly amends prior claims of how the petitioner will allegedly benefit the national interest, conceding that the petitioner is engaged in assisting companies import cheap electronic components from China but asserting that these activities make the companies more competitive globally. For the reasons discussed below, we affirm our previous decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The only issue raised by the director was whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Both the director and the AAO found that the petitioner works in an area of intrinsic merit, business consulting. Initially, the petitioner asserted that the proposed benefits of his work would be increased exports to China, which would have a national impact because his consulting work for multiple businesses "can generate direct guidance for U.S. small and medium-sized businesses" seeking to do business in China. Counsel reiterated this assertion on appeal, stating that his work with a finite number of companies will "encourage other small businesses, which in the past may have been apprehensive about entering into trade agreements with China, to start trading." Counsel

further asserted that through the petitioner's "partnership with the China Council for the Promotion of International Trade ('CCPIT'), he can develop a matrix for U.S. small businesses to tap into the expanding China market." The AAO found that the petitioner's claim to be able to impact exports to China on a national scale appears little more than speculation.

On motion, counsel now asserts that the petitioner will be assisting trade "between small and medium sized businesses in the United States," which will benefit the national interest regardless of whether it reduces the trade deficit with China. Counsel further asserts that the importation of cheap electronic components from China, while not directly reducing the trade deficit with China, will improve U.S. exports globally.

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). We find that counsel's current assertion that the petitioner will actually benefit the national interest not by increasing exports to China but by increasing imports from China is a material change that would have to serve as the basis of a new petition. In addition, the record does not support counsel's assertion that the cost of electronic components is the factor preventing U.S. exports. In fact, the 2004 Small Business Association (SBA) report submitted into the record, "Costs of Developing a Foreign Market for a Small Business: The Market and Non-Market Barriers to Exporting by Small Firms," found that the uncertainty of foreign markets and the large U.S. market were the largest barriers to exporting. The report does not suggest that small and medium sized businesses in the United States are not competitive globally because they lack access to cheap electronic components.

Furthermore, the petitioner's new basis of eligibility suggests that the petitioner was not entirely forthcoming about his proposed work previously, reducing his overall credibility. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As stated in our previous decision, even if we concluded that the *proposed* benefits of the petitioner's work would be national in scope, he has not demonstrated that he would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof.

A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Initially, the petitioner relied on working as a "senior business analyst" with International Profit Associates (IPA) and his roles with various companies including two related distributor affiliations. The petitioner also claimed to have begun his own company, [redacted]

The AAO found that, in general, the evidence suggested that the petitioner's roles with various companies were far smaller than claimed. The motion is based on the petitioner's alleged accomplishments with the International Alliance of Electronic Distributors (IAED), the Electronic Resellers Association (ERAI) and the potential of his new company, ANI Network. Specifically, the petitioner submits an unsigned[1] contract between ANI Network and CCPIT Shandong Light Industry Branch and evidence regarding his work with two related affiliations, ERAI and IAED. Thus, this decision will be limited to a discussion of these claims. We reaffirm, however, all of the findings in our previous decision. For the reasons discussed below, the record lacks evidence of the significance of the petitioner's role for ERAI, the success of IAED or the success of ANI Network, assuming it even exists as a business entity.

Throughout the proceedings, the petitioner has submitted several letters, some of which are unsigned. We further note that the signatures of [redacted] Chair of Meet China Biz, on the reference letters are visibly and significantly different from the signature of the same individual on a 2002 letter to Meet China Biz Conference participants. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record reveals that ERAI is an affiliation of electronics distributors. ERAI gathers, verifies, investigates and reports information received from its members to expose potential problems in the

[1] The petitioner submitted two copies of this contract, neither of which is signed by hand. The two copies contain typed "signatures" that do not match.

electronics industry. ERAI created the IAED, a smaller alliance of ERAI members who would serve as franchise distributors for electronics manufacturers in China. In September 2001, ERAI began soliciting members for the IAED. While the record contains the letters soliciting Chinese suppliers, the record does not contain any final agreements between IAED and suppliers. The petitioner assisted with the founding of IAED and served as the Director of International Market Development. In 2001, IAED filed a nonimmigrant visa petition in behalf of the petitioner, seeking to employ him at a salary of $50,000.

In support of the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, the petitioner submitted a 2004 letter from IAED affirming that they employed him as Director of Asia Market Development at $50,000 a year. The Forms W-2 submitted both with the petition and the Form I-485 application reflect that the petitioner earned $11,538.48 at IAED in 2001 and $8,653.86 in 2002. The record contains no evidence of wages after 2002. In fact, in 2002, the petitioner also **earned $13,581.65 from ERAI, suggesting that he did not work for IAED the full year.** Even considering the petitioner's wages from IAED and ERAI in the aggregate in 2002, they are well below $50,000. The petitioner provides no explanation for failing to provide evidence of wages from IAED after 2002 while submitting a letter purporting to confirm his employment with IAED in 2004. The evidence as a whole raises concerns regarding IAED's continued existence or at least its financial status.

On motion, [redacted] Vice President of ERAI, asserts that the petitioner played a critical role in the IAED strategy and that this strategy "has clearly changed the way that US businesses do business in China." [redacted] however, speaks of IAED in the past tense. The record lacks evidence that IAED was a successful program that has persisted and gained recognition in the industry beyond a few satisfied clients. For example, the petitioner has not submitted evidence that trade journals or other media have remarked on the success of IAED or that IAED is presented as a model in business schools. Significantly, the concept of IAED was to include only a small number of distributors. The record lacks evidence that IAED inspired other similar alliances. As such, the record does not support [redacted] assertion that IAED changed the way business is done with China. In summary, while we do not contest that the petitioner helped create IAED, the record is absent any evidence that IAED has influenced how small and medium size businesses do business in China.

While ERAI appears to continue operations as an affiliation with numerous members, the petitioner's role with ERAI as a whole is much less clear. Regarding his role with ERAI, the petitioner asserted:

> I worked with ERAI started out [sic] as [a] China Market Business Consultant, and became one partner of [its] new venture IAED. I designed and initiated [an] Asia/China market development plan and provided expertise for ERAI Asia client promotion, served special needs of incident mediation, address[ed] [the] challenge territory barrier[s] and cultural difference[s], and solve[d] clients' business problem[s]. The outcome is to promote U.S. business concept, stimulate international sales, encourage

> understanding, thus benefit[ing] the interest of American business, as well as contribut[ing] to the health of the national economy.

Initially, the petitioner submitted an unsigned letter from [redacted], a founding member of ERAI, asserting that the petitioner had worked "successfully" with ERAI. On appeal, the petitioner provided a signed letter from [redacted] that failed to identify any contributions the petitioner made to that organization.

The petitioner submitted part of ERAI's employee handbook and his signature affirming that he received the handbook. He also submitted materials on joining ERAI. Finally, the petitioner submitted an e-mail message addressed to a potential member advising that the petitioner, ERAI's "customer service agent for China, will be contacting you regarding your payment for your ERAI Membership Dues." The AAO concluded that none of the evidence suggested that the petitioner performed business management services for ERAI or its members. On motion, the petitioner does not submit any additional evidence regarding his role with ERAI as a whole, beyond his work on IAED discussed above. As such, we reaffirm our previous findings on this issue.

On appeal, [redacted] referenced the petitioner's "relation with [the] China Council for the Promotion of International Trade ("CCPIT")." [redacted] asserted that through this relationship, the petitioner "can develop a radial pipeline for U.S. small businesses to tap into the expanding China market." The record contains a single letter from CCPIT's Arlington, Virginia office. In the letter, addressed to the petitioner, [redacted] introduces the organization and concludes: "If possible, we'll be more than happy to visit your State, to meet some people from [the] Department of Commerce, Export Administration Center, or Chamber, giving a presentation on our Chamber." [redacted] then indicates that he is including information about CCPIT. The AAO concluded that the tone of this letter did not suggest a prior relationship between the petitioner and CCPIT. Rather, it appears to be an informational response to a telephone inquiry by the petitioner. [redacted] does not propose working with the petitioner. Rather, he agrees to meet with more distinguished entities in the petitioner's home state, if requested.

On motion, the petitioner submits evidence that CCPIT signed a Memorandum of Understanding (MOU) with the United States to foster new relationships between U.S. and Chinese small and medium size companies in 14 Chinese business centers. The petitioner also submits what purports to be a contract between ANI Network and CCPIT Shandong Light Industry Branch. As stated above, this contract is unsigned and has no evidentiary value. Moreover, the record does not establish how such a contract relates to CCPIT's MOU, which created a virtual network with U.S. diplomatic missions in China that have contracted with American commercial representatives, who travel to the 14 business centers to introduce U.S. companies to local and regional officials and business people. The record does not contain evidence that the petitioner or ANI Network is a commercial representative hired by a U.S. diplomatic mission or that the petitioner is affiliated with such a representative. As such, the petitioner has not established the relevance of the MOU to his claims of eligibility.

Moreover, the only evidence of the existence of ANI Network as a business entity is an allegedly notarized statement that the petitioner is operating [redacted] as a sole proprietorship. The petitioner did not explain how he is able to use "Inc." in the title of a company operated as a sole proprietorship. The record also lacks evidence that ANI Network has a Federal Employment Identification Number (FEIN) or that it is properly registered as either a corporation or limited liability company. The AAO explicitly noted the lack of evidence regarding the success of ANI Network, such as financial documentation or coverage in the general media or trade journals.

On motion, the petitioner does not submit the evidence that was explicitly found lacking in our initial decision: tax returns or financial statements for ANI Network or coverage in the general or trade media. Rather, he submits the unsigned contract discussed above and a "coupon" for referral fees from ANI Network. The coupon reveals that the address for the company is the petitioner's apartment. The petitioner further submits two letters on ANI Network letterhead he allegedly issued to others regarding a meeting with the Mayor of Providence to discuss creating a sister city deal with a city in China. Self-serving letters *from* the petitioner are not evidence that the meeting was fruitful or even that it took place. The record lacks any confirmation from the Mayor's office. Moreover, the letters are issued after the date of filing and cannot serve as evidence of accomplishments as of that date. Finally, the petitioner submits additional letters from clients. [redacted] President of Hardware Services, Inc., asserts that the petitioner is assisting him sourcing builder's hardware to China. Client testimonials are more persuasive when supported by evidence of the financial success of the petitioner's company or its recognition in the field beyond its clients.

Ultimately, the petitioner has not overcome the concerns provided in our initial decision. Specifically, the record lacks evidence that the petitioner is recognized beyond his colleagues and a small number of clients. The petitioner has not submitted the specific evidence found lacking in our previous decision, tax returns or financial statements of ANI Network or other evidence of its business success beyond the testimonials of a few clients. As those documents were specifically identified as lacking in our previous decision, the documents will not be considered in any future filing regarding this petition. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The testimonials submitted are not supported with annual reports reflecting large increases in profits after utilizing the petitioner's services. While the petitioner may have been involved in creating the IAED concept, the record lacks evidence that IAED is viewed in the field as a significant improvement in business dealings with China. While the petitioner is clearly competent in his job and has earned the respect of his clients, the record is absent any evidence to support the assertions of his colleague, [redacted], that he has influenced the field as a whole.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not

established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The AAO's decision of December 14, 2005 is affirmed. The petition is denied.